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March 22, 2005

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Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Federal Communications Commission  
Office of Secretary

Re: Ex Parte - ET Docket No. 95-183 and RM-8553

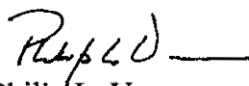
Dear Ms. Dortch:

Yesterday, Joe Sandri, Gene Rappoport, Vishnu Sahay, and I, representing IDT Spectrum, Inc., met with Michael Pollak, John Borkowski, and Robert Krinsky of the Wireless Telecommunications Bureau.

Our discussion is reflected in the attached document.

In accordance with the Commission's rules, I am submitting two copies of this letter.

Sincerely,

  
Philip L. Verveer

Enclosure

cc: Michael Pollak  
John Borkowski  
Robert Krinsky

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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	ET Docket No. 95-183
Regarding the 37.0-38.6 GHz and	)	RM-8553
38.6-40.0 GHz Bands	)	
	)	
Implementation of Section 309(j) of the	)	PP Docket No. 93-253
Communications Act – Competitive	)	
Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz	)	
Bands	)	

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To: The Commission

MAR 22 2005

Federal Communications Commission  
Office of Secretary

**EX PARTE SUBMISSION OF**  
**WINSTAR COMMUNICATIONS**

Winstar Communications, an IDT company (hereinafter "Winstar")<sup>1</sup>, hereby adds to its record of comments and reply comments in this proceeding, Third Notice of Proposed Rulemaking regarding Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, and responds to the Ex Parte submission of Northrop Grumman Space and Mission Systems Corporation, through its Northrop Grumman Space Technology sector (NGST).

NGST has two basic premises for its submission. First, NGST proposes that the Commission would have to proceed with the establishment of rules and policies that permit the operation of Earth stations in the 37.5-38.6 GHz portion of the 37/42 GHz bands and that future fixed service licensees will have to protect the Earth stations that are operating or proposed to operate in the band. Associated with this proposal is an

assertion that to ensure a proper balance and perspective, these Earth stations would be excluded only from the 10 most populous Economic Areas. NGST erroneously asserts that this would preserve the practical elements in Winstar's comments.

Winstar has in its Reply Comments in this proceeding supported a delay in licensing the 37/42 GHz bands. However, Winstar would have serious concerns if Earth station licenses are issued in these bands prior to an open auction for licensing under Part 101 regulations. NGST suggests that instead of issuing area licenses through an auction process, the Commission could award non-exclusive Economic Area wide licenses. Winstar believes that—in accordance with the Coase Theorem<sup>2</sup>--exclusive area-wide licensing is the best method for utilizing the band. Though Winstar has noted its concerns regarding the economics of auctioning and licensing additional spectrum in the 37.5-40.0 GHz band at this time, it does not believe that concern should lead to awarding licenses only to Earth stations in that band. Note 15 of Section 25.202 of the FCC regulations requires Earth stations in this band be licensed under Part 101 regulations and Winstar would oppose any modification of that requirement.

NGST proposes that only the 10 most populous Economic Areas be restricted from licensing for Earth stations. Winstar has in its comments in this proceeding, in its comments in the 38.6-40.0 GHz proceeding and in previous Ex Parte meetings and submissions to the Commission explained in detail why these Earth stations should be restricted to rural and remote areas. Avoidance of only the 10 most populous Economic Areas is not at all responsive to the concerns expressed by Winstar regarding unacceptable interference to its services from the downlink transmissions from the space station to these Earth stations. It is also a departure from the long-standing assertions from NGST (thru its predecessor, TRW) that it did not intend to deploy ubiquitously or in population centers. According to the 2000 Census, the 11<sup>th</sup> largest market is Atlanta, the

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<sup>1</sup> Note: During the Pendency of this proceeding, an entity, IDT Spectrum, LLC, was created and that entity holds certain licenses formerly held by Winstar.

<sup>2</sup> See Generally: (i) Ronald Coase, "The Problem of Social Costs," Journal of Law and Economics, 1960, University of Chicago Press, and (ii) Ronald Coase, . "**Comment on Thomas W. Hazlett: Assigning Property Rights to Radio Spectrum Users: Why Did FCC License Auctions Take 67 Years?**," Journal of Law & Economics, 1998, University of Chicago Press.

12<sup>th</sup> Miami, and so on. It is inconceivable that the exclusion zones and other interference concerns that NGST requires have any role in any market—large or small—without the permission of the terrestrial licensee in an auction band like 38.6-40.0 GHz, or in a neighboring band like 37.5-38.6 GHz, since the satellite downlink blankets both bands.

Winstar's does not agree with NGST's assertions that their suggested approach advances the public interest. First Avenue Networks, the Fixed Wireless Communications Coalition and Winstar have explained in their filings in this proceeding why a delay in licensing in these bands would be in the public interest. Winstar has also explained in great detail why Gateway Earth Stations should be restricted to rural and remote areas. Once the Commission develops technical rules for licensing the 37/42 GHz band, then an auction for Part 101 licenses would be necessary in order to protect the interests of all potential licensees. Siting of Gateway Earth stations in the 37.5-40.0 GHz band must protect the fixed service from the downlink transmissions of the space station.

NGST's second point regarding the power flux density limits asserts that Winstar raised no objections to the limits imposed by the Commission and therefore has no right to continue to object to those limits. That is wholly incorrect. Winstar has objected to each proposed decrease in protection to the high density fixed service that has occurred since the U.S. proposal to CITEL in March 2000. The record clearly notes that Winstar has shown how each increase in pfd level would adversely affect its customers and its services. The underlying history behind the negotiations that founded the Commission's decision on the power flux density levels recognized that these levels and the soft segmentation approach were the result of many years of negotiation between FS and FSS interests, yet subject to reasonable and complete analysis and standards on: (i) fixed service interference into earth stations, (ii) percentage of time interference formulas and other technical studies that have yet to occur, largely due to the express efforts by NGST to prevent their completion.

The associated very important matter of increased unacceptable interference into fixed service operations, due to the FSS increasing its downlink transmit power, to overcome rain induced attenuation, has not been decided and is of great concern to Winstar. In the 2<sup>nd</sup> R&O the Commission notes, that in the *V-Band Further Notice*, they had “requested commenters to address the issue of under what circumstances and for what period of time to permit FSS operators to exceed the lower PFD limit in the 37.5-40.0 GHz band, especially during times when there is large attenuation of the satellite signal due to rain.” The Commission found that the record in this proceeding is not sufficiently detailed to adopt rules for satellite operations with a PFD exceeding the lower PFD limit in the 37.5-40.0 GHz band. The Commission states that, “Until we have a better record or a more reasoned and comprehensive approach on dealing with an increase in PFD for a limited amount of time, we will incorporate only the lower and upper boundary PFD limits that are ripe for adoption. We will address this issue in a future rulemaking to establish a better record to determine the conditions under which the lower PFD limit may be exceeded.”

The Commission further requires that, “Even though the upper PFD boundary is being implemented in the rules, any request to exceed the lower boundary would be addressed on a case-by-case basis and subject to the review and coordination of both the International Bureau and the Wireless Telecommunications Bureau to ensure that the proper sharing conditions exist between the satellite and terrestrial stations.”

Winstar notes that, contrary to NGST’s assertion, the Commission decision on power flux density limits is not final. The open issues regarding if, when, how much and for how long the satellite space station should be permitted to increase its downlink transmit power give Winstar good reason to recall its concerns regarding an increase in FSS downlink power and to restate its position regarding power flux density limits. Winstar does not support any increase in satellite space station transmit power to overcome the effects of rain attenuation. If an increase in power is permitted, then the beam to the Gateway Earth station should be limited to rural and remote areas in low rain probability locations to minimize any potential effect to the fixed service.

NGST has consistently opposed all efforts by Winstar to develop, within the U.S. preparatory process for ITU-R WP 4-9/S, methodologies for determining the impact on the FS of increases in FSS transmit power to overcome rain fades. Winstar placed such “banned” studies (U.S. WP 4-9S/4 in preparation for a WP 4-9S meeting in October, 2004) into the record in this proceeding (See attachment D of Winstar’s comments) because the public interest deserves, and the Administrative Procedures Act mandates fair and reasonable consideration. The NPRM specifically requested comments on factors effecting licensing and operations in the 37/42 GHz band also specifically asked whether technical rules in the 39 GHz band required harmonization with the 37/42 GHz rules, once established.

Winstar respectfully urges the Commission to consider these ex parte comments in addition to those expressed in its comments and reply comments to this proceeding.

March 21, 2005